

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

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FORT SMITH, ARKANSAS 72902

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CHRISTOPHER R. JOHNSON
CLERK

January 26, 2011

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EL DORADO, ARKANSAS 71730

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35 E MOUNTAIN, RM 510
FAYETTEVILLE, ARKANSAS 72701

100 RESERVE ST, RM 347
HOT SPRINGS, ARKANSAS 71901

Clerk, U S District Court
Martin Luther King Federal Building
50 Walnut Street, Room 4015
Newark, NJ 07102

ATTENTION: Criminal Division

Re: *USA v. Andrew Auernheimer*
WD/AR Case No. 5:11M5003-001
District of New Jersey Case No. 11-4022 (CCC)

Dear Clerk:

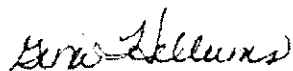
Enclosed please find the following documents regarding the above named defendant:

1. Complaint (certified copy).
2. Clerk's Minutes (certified copy).
3. Financial Affidavit (original).
4. Detention Order (certified copy).
5. Clerk's Minutes of Detention Hearing (certified copy).
6. Commitment to Another District (original).
7. Order Appointing CJA Counsel (certified copy).

Also enclosed is a certified copy of the docket sheet from the Western District of Arkansas. Please mark the enclosed copy of this letter as received and return in the enclosed, self-addressed envelope.

Sincerely,

CHRISTOPHER R. JOHNSON
CLERK OF THE COURT



by:

Gina Rhodes Hellums
Courtroom Deputy Clerk

Enclosures as stated

2011 FEB - 1 10 10:10
U.S. DISTRICT COURT
NEWARK, NJ

ORIGINAL FILED

LDV/ZI 2010R00031

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

DANIEL SPITLER and
ANDREW AUERNHEIMER

CRIMINAL COMPLAINT

*Western District of Arkansas
5:11M5003-001*

Mag. No. 11-4022 (CCC)

I, Christian Schorle, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.



Christian Schorle, Special Agent,
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,
January 13, 2011, at Newark, New Jersey



HONORABLE CLAIRE C. CECCHI
UNITED STATES MAGISTRATE JUDGE

**U.S. DISTRICT COURT
WESTERN DIST ARKANSAS
FILED**

JAN 18 2011

CHRIS R. JOHNSON, Clerk
By

Deputy Clerk

ATTACHMENT A

Count 1

(Conspiracy to Access a Computer without Authorization)

From on or about June 2, 2010 through on or about June 11, 2010, in the District of New Jersey, and elsewhere defendants

DANIEL SPITLER and
ANDREW AUERNHEIMER

knowingly and intentionally conspired with each other and others to access a computer without authorization and to exceed authorized access, and thereby obtain information from a protected computer, namely the servers of AT&T, in furtherance of a criminal violation of the laws of the State of New Jersey, specifically, N.J.S.A. 2C:20-31, contrary to Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B)(ii), in violation of Title 18, United States Code, Section 371.

Count 2

(Fraud in Connection with Personal Information)

From on or about June 2, 2010 through on or about June 11, 2010, in the District of New Jersey, and elsewhere defendants

DANIEL SPITLER and
ANDREW AUERNHEIMER

knowingly transferred, possessed, and used, without lawful authority, means of identification of other persons, including means of identification of thousands of New Jersey residents, in connection with unlawful activity, specifically, the unlawful accessing of AT&T's servers contrary to Title 18, United States Code, Section 1030(a)(2)(C), in violation of Title 18, United States Code, Section 1028(a)(7).

ATTACHMENT B

I, Christian Schorle, am a Special Agent with the Federal Bureau of Investigation. I have knowledge of the facts set forth below from my involvement in the investigation, a review of reports, and discussions with other law enforcement personnel. Any statements attributed to individuals are described in substance and in part.

1. Since in or about June 2010, the Federal Bureau of Investigation has been investigating a data breach at AT&T that resulted in the theft of personal information of approximately 120,000 AT&T customers, thousands of whom are New Jersey residents. That data breach and associated theft were perpetrated by Daniel Spitler ("defendant Spitler") and Andrew Auernheimer ("defendant Auernheimer") for the express purpose of causing monetary and reputational damage to AT&T and monetary and reputational benefits to the defendants.

A. The iPad and AT&T

2. At all times relevant to this Complaint:

a. The iPad, introduced to the market on or about January 27, 2010, was a device developed and marketed by Apple Computer, Inc. It was a touch-screen tablet computer, roughly the size of a magazine. The iPad allowed users to, among other things, access the Internet, send and receive electronic mail, view photographs and videos, read electronic books, word-process, and create spreadsheets and charts.

b. AT&T Communications, Inc. ("AT&T") was an interexchange carrier and long distance telephone company headquartered in Bedminster, New Jersey. Among other things, AT&T provided certain iPad users with Internet connectivity via AT&T's 3G wireless network.¹

c. AT&T offered two data plans for iPad 3G users: 250 MB of data per month for \$14.99 and 2 GB of data per month for \$25.² iPad 3G users who wished to subscribe to the AT&T 3G network had to register with AT&T. During the registration process, the user was required to provide, among other things, an e-mail address, billing address, and password.

d. At the time of registration, AT&T automatically linked the iPad 3G user's e-mail address to the Integrated Circuit Card Identifier ("ICC-ID") of the user's iPad, which was

¹ Both Wi-Fi and the 3G wireless network were mechanisms by which users could access the Internet. For some iPad models, Internet connectivity was provided strictly over Wi-Fi, while others offered a combination of Wi-Fi and AT&T's 3G wireless network.

² Until on or about June 7, 2010, AT&T also offered a third data plan, which allowed users unlimited access to data for \$29.99 per month.

a 19 to 20 digit number unique to every iPad (specifically, unique to the Subscriber Identity Module ("SIM") card in the iPad). Accordingly, each time a user accessed the AT&T website, his ICC-ID was recognized and, in turn, his e-mail address was automatically populated, providing the user with speedier and more user-friendly access to the website.

e. The ICC-IDs and associated iPad 3G user e-mail addresses were not available to the public and were kept confidential by AT&T.

B. The Data Breach

3. Prior to mid-June 2010, when an iPad 3G communicated with AT&T's website, its ICC-ID was automatically displayed in the Universal Resource Locator, or "URL," of the AT&T website in plain text. Seeing this, and discovering that each ICC-ID was connected to an iPad 3G user e-mail address, hackers wrote a script termed the "iPad 3G Account Slurper" (the "Account Slurper") and deployed it against AT&T's servers. AT&T's servers are protected computers as defined in Title 18, United States Code, Section 1030(e)(2).

4. The Account Slurper attacked AT&T's servers for several days in early June 2010, and was designed to harvest as many ICC-ID/e-mail address pairings as possible. It worked as follows:

- a. The Account Slurper was designed to mimic the behavior of an iPad 3G so that AT&T's servers were fooled into believing that they were communicating with an actual iPad 3G and wrongly granted the Account Slurper access to AT&T's servers.
- b. Once deployed, the Account Slurper utilized a process known as a "brute force" attack – an iterative process used to obtain information from a computer system – against AT&T's servers. Specifically, the Account Slurper randomly guessed at ranges of ICC-IDs. An incorrect guess was met with no additional information, while a correct guess was rewarded with an ICC-ID/e-mail pairing for a specific, identifiable iPad 3G user.

5. From on or about June 5, 2010 through on or about June 9, 2010, the Account Slurper attacked AT&T's servers, gained unauthorized access to those servers, and ultimately stole for its hacker-authors approximately 120,000 ICC-ID/e-mail address pairings for iPad 3G customers. This was done without the authorization of AT&T, Apple, or any of the individual iPad 3G users.

C. Andrew Auernheimer and Goatse Security Take Credit for the Breach

6. On or about June 9, 2010, immediately following the theft, the hacker-authors of the Account Slurper provided the stolen e-mail addresses and ICC-IDs to the website Gawker

(<http://gawker.com>).³ Gawker proceeded to publish on its website the stolen information, albeit in redacted form, as well as an article concerning the breach (the "Gawker Article").

7. The Gawker Article provided in relevant part:

A security breach has exposed iPad owners including dozens of CEOs, military officials, and top politicians. They – and every other buyer of the cellular-enabled tablet – could be vulnerable to spam marketing and malicious hacking. The breach . . . exposed the most exclusive email list on the planet, a collection of early-adopter iPad 3G subscribers that includes thousands of A-listers in finance, politics and media, from New York Times Co. CEO Janet Robinson to Diane Sawyer of ABC News to film mogul Harvey Weinstein to Mayor Michael Bloomberg. It even appears that White House Chief of Staff Rahm Emanuel's information was compromised. It doesn't stop there. According to the data we were given by the web security group that exploited vulnerabilities on the AT&T network, we believe 114,000 user accounts have been compromised, although it's possible that confidential information about every iPad 3G owner in the U.S. has been exposed.

8. Under the heading, "Breach details: Who did it, and how," the Gawker Article reported: "The [AT&T] subscriber data was obtained by a group calling itself Goatse Security." The Article continued:

The group wrote a PHP script to automate the harvesting of data. Since a member of the group tells us the script was shared with third-parties prior to AT&T closing the security hole, it's not known exactly whose hands the exploit fell into and what those people did with the names they obtained. A member tells us it's likely many accounts beyond the 114,000 have been compromised.⁴

9. On the same day the Gawker Article appeared, June 9, 2010, a post was made to the LiveJournal weblog, <http://weev.livejournal.com>, which read: "Oh hey, my security consulting group just found a privacy breach at AT&T[.]"⁵ The post further linked to the Gawker Article and stated: "[T]his story has been broken for 15 minutes, twitter is blowing the fuck up,

³ Gawker is a website that advertises itself as providing "Gossip from Manhattan and the Beltway to Hollywood and the Valley."

⁴ In fact, as noted above, information was stolen from approximately 120,000 accounts.

⁵ LiveJournal is a social networking website on which users can set up personal weblogs and post messages. Once a weblog has been created, only the user of that weblog can post messages and content on that weblog.

we are on the forntpage of google news and we are on drudge report (the big headline)[.]”⁶ The “User Profile” for the LiveJournal weblog, <http://weev.livejournal.com>, listed the user as “weev” with the name “Escher Auernheimer.”

10. On or about June 10, 2010, the website CNET published an article titled, “Hacker defends going public with AT&T’s iPad data breach (Q&A).” The article reported: “On Thursday, CNET talked to a key member of Goatse – Escher Auernheimer, also known as ‘Weev’ – about the group and what motivates them.” In the article, a question and answer dialog was presented, including the following:

Q: So, one of your members had an iPad and noticed this strange interaction with the AT&T Web site?

A: He used this AT&T security maintenance app. It was part of the normal user experience that tipped him off to something that would allow him to scrape this data.

Q: Then a script was written to do an automated brute force, right?

A: Correct.

11. More recently, on or about November 17, 2010, in an e-mail sent to an Assistant United States in the District of New Jersey, defendant Auernheimer again took credit for the data breach and associated theft of ICC-ID/e-mail address pairings, writing: “AT&T needs to be held accountable for their insecure infrastructure as a public utility and we must defend the rights of consumers, over the rights of shareholders. . . . I advise you to discuss this matter with your family, your friends, victims of crimes you have prosecuted, and your teachers for they are the people who would have been harmed had AT&T been allowed to silently bury their negligent endangerment of United States infrastructure.”

D. Goatse Security

12. Through their investigation, federal law enforcement officers have learned that Goatse Security is a loose association of Internet hackers and self-professed Internet “trolls.”⁷ Indeed, defendant Auernheimer has previously been public and outspoken about his trolling activities. For example:

⁶ All spelling and grammatical errors in this paragraph are per the original.

⁷ A “troll” is a person who intentionally, and without authorization, disrupts services and content on the Internet.

- a. In an August 3, 2008 interview with *The New York Times*, defendant Auernheimer admitted: "I hack, I ruin, I make piles of money. I make people afraid for their lives. Trolling is basically Internet eugenics. I want everyone off the Internet. Bloggers are filth. They need to be destroyed. Blogging gives the illusion of participation to a bunch of retards. . . . We need to put these people in the oven!"
- b. Likewise, in an interview with the website *Corrupt* in August 2008, defendant Auernheimer stated: "The security industry does not work against hackers. Security is a myth, there is no system that cannot be broken. . . . For the companies I've targeted, I've showed up at their parties and given some friendly greetings to bask in the looks of disgust and disdain. I take credit and responsibility for my actions."
- c. Defendant Auernheimer also maintains a webpage at www.blip.tv, which is a website that, like YouTube, allows users to create and post videos. On his blip.tv page, Auernheimer posted several "sermons" in the guise of the "iProphet." One such video was entitled "Sermon on Fear and The Men In Black/Direct Democracy." During this video, Auernheimer stated: "Trolling can frequently have large economic repercussions as, as I learned, I learned when I trolled Amazon. I saw a one billion dollar change in their market capitalization. That's the most monetary affection [sic] of a publicly traded stock that I've ever personally done. I mean, I've caused a more dramatic shift in price, but never market capitalization." Auernheimer continued: "So a billion dollars changed hands as a result of my trolling, and I'm very, very glad to know that such insignificant things on the Internet can have drastic, far reaching effects."

13. According to the Goatse Security website, the Goatse Security "Team" includes eight members, among whom are defendant Auernheimer and "JacksonBrown." Through various investigative techniques, law enforcement officers have identified "JacksonBrown" as defendant Spitler.

14. The Goatse Security website describes defendant Auernheimer as having "[e]xtensive offensive web app vuln and business logic exploitation experience. Bash while drunk, perl while tripping, Ruby while living in SF SoMa. Representing antisecc, Bantown and Encyclopedia Dramatica. President of the GNAA." Defendant Spitler is described as an "embedded and mobile devices engineer. PPC assembly. GNAA, obviously." The Goatse Security website provides a hyperlink to the GNAA website.

15. The GNAA website states that "[t]his website is maintained by the GNAA, world-famous trolling organization." The GNAA website provides hyperlinks to the Goatse Security website, as well as defendant Auernheimer's LiveJournal weblog.

E. The Internet Relay Chats

16. On or about June 15, 2010, pursuant to a search warrant signed by the Honorable Erin L. Setser, U.S.M.J. in the Western District of Arkansas, law enforcement officers conducted a search of defendant Auernheimer's home, located in Fayetteville, Arkansas. During the execution of the search warrant, defendant Auernheimer agreed to speak with federal law enforcement officers and stated, among other things, that he and the other members of Goatse Security often communicated with one another using an online medium known as Internet Relay Chat, or "IRC."

17. Approximately one month after the search of defendant Auernheimer's home, a confidential source (the "CS") contacted federal law enforcement officers and stated, among other things, that the CS routinely monitored "#dominion," one of the IRC channels used by Goatse Security members to communicate with one another. The CS also provided law enforcement officers with chat logs from the "#dominion" channel from on or about June 2, 2010 through on or about June 11, 2010. Extending over 150 pages, those chat logs conclusively demonstrate that defendants Spitler and Auernheimer were responsible for the data breach and conducted the breach to simultaneously damage AT&T and promote themselves and Goatse Security. Excerpts from the chat logs are provided below.⁸

June 5, 2010

18. On or about June 5, 2010, defendant Spitler was chatting with "Nstyr" and "Pynchon," and the three considered the possible benefits of harvesting ICC-ID/e-mail pairings:

Spitler:	if you enter valid ICCIDs in this website you can get iPad subscriber email addresses I dont see the point unless we phish ⁹ for passes even then that's boring
Nstyr:	data minig *minig you could put them in a database for spamming for example sell them to spammers. . .
Spitler:	tru ipad focused spam
Pynchon:	harvest all the emails then expose it publicly

⁸ All spelling and grammatical errors throughout the IRC chats are per the original authors.

⁹ "Phishing" involves sending e-mails to users falsely claiming to be an established, legitimate enterprise in an attempt to scam the users into surrendering private information that will be used for identity theft.

Spitler: hahaha

Pynchon: tarnish at&t

Spitler: true

Nstyr: or sell if for thousands to the biggest spammers

19. Later that day, defendant Spitler reported the following to defendant Auernheimer:

Spitler: I just harvested 197 email addresses of iPad 3G subscribers there should be many more . . . weev: did you see my new project?

Auernheimer: no

Spitler: I'm stepping through iPad SIM ICCIDs to harvest email addresses if you use someones ICCID on the ipad service site it gives you their address

. . .

Auernheimer: loooool thats hilarious HILARIOUS oh man now this is big media news . . . is it scriptable? arent there SIM that spoof iccid?¹⁰

Spitler: I wrote a script to generate valid iccids and it loads the site and pulls an email

. . .

Auernheimer: this could be like, a future massive phishing operation serious like this is valuable data we have a list a potential complete list of AT&T iphone subscriber emails

Spitler: ipad but yeah

20. When defendant Spitler announced that he was "in a rut" and having difficulty determining additional ICC-ID/e-mail pairings, defendant Auernheimer assisted, offering: "SIM cards may be allocated by geographic region, either for number administration or network

¹⁰ "LOL" and its variants stand for laughing out loud.

planning reasons. The method of payment (pre-paid, post-paid) may be allocated on the SIM cards. . . . so sims are definitely preallocated either by geographic region sales channes, service providers or MVNOs question is who allocates them . . . probably AT&T suballocates free IDs to apple hopefully not at random . . . otherwise we have a real big space to search[.]”

21. On or about June 5, 2010, and again the following day, defendant Auernheimer encouraged defendant Spitler to amass as many ICC-ID/e-mail pairings as possible, writing: “if we can get a big dataset we could direct market ipad accessories[.]” Likewise, after learning that defendant Spitler had collected “625 emails,” defendant Auernheimer wrote: “takes like, millions to be profitable re: spam but thats a start[.]”

June 6, 2010

22. Responding to defendant Auernheimer’s encouragement, on or about June 6, 2010, defendant Spitler reported:

Spitler:	I hit fucking oil
Auernheimer:	looooool nice
Spitler:	If I can get a couple thousand out of this set where can we drop this for max lols?
Auernheimer:	dunno i would collect as much data as possible the minute its dropped, itll be fixed BUT valleywag i have all the gawker media people on my facecrook friends after goin to a gawker party

23. As defendant Spitler uncovered additional ICC-ID/e-mail pairings, he continued speaking with defendant Auernheimer about releasing the information to the press and, related, the legality of the data breach:

Spitler:	do I got to get involved
Auernheimer:	no
Spitler:	I’d like my anonaminty
Auernheimer:	alright
Spitler:	sry dunno how legal this is or if they could sue for damages
Auernheimer:	absolutely may be legal risk yeah, mostly civil you

absolutely could get sued to fuck

Spitler: D8¹¹

Auernheimer: alright i can wrangle the press just get me the codes and whatnot show me how to run this thing

24. Defendant Spitler then proceeded to provide the script to defendant Auernheimer, writing: "heres the script you run it php [script redacted] like first number is iccid minus the checkdigit second number is count or how many you want to check you have to pipe the output it just starts checking sequentially adding the proper checkdigit automatically lol[.]"

25. As defendants Spitler and Auernheimer were conversing, another Goatse Security member, "Rucas," offered his advice on how best to use the ICC-ID/e-mail address pairings, stating: "dont go to the press sell the list to competitors . . . i just had an idea send out at&t phishing e-mails to all these idiots with an ipad trojan[.]"

26. As the data breach continued, defendant Auernheimer wrote to defendant Spitler: "if we get 1 reporters address with this somehow we instantly have a story . . . the best way to have a leadin on it . . . HI I STOLE YOUR EMAIL FROM AT&T WANT TO KNOW HOW?" Defendant Spitler then proceeded to provide defendant Auernheimer with an ICC-ID and e-mail address for a member of the Board of Directors at News Corporation. Defendant Auernheimer sent an e-mail to that Board member, which read in relevant part:

An information leak on AT&T's network allows severe privacy violations to iPad 3G users. Your iPad's unique network identifier was pulled straight out of AT&T's database We have collected many such identifiers for members of the media and major tech companies If a journalist in your organization would like to discuss this particular issue with us[,] I would be absolutely happy to describe the method of theft in more detail.

27. As the data breach continued, so too did the discussions between defendants Spitler and Auernheimer and other Goatse Security members about the best way to take advantage of the breach and associated theft:

Pynchon: hey, just an idea delay this outing for a couple days
tomorrow short some at&t stock then out them on tuesday
then fill your short and profit

Rucas: LOL

¹¹ The phrase "D8" means to be deeply involved in an activity or to perform an activity to the fullest extent possible.

Auernheimer: well i will say this it would be against the law . . . for ME to short the att stock but if you want to do it go nuts

Spitler: I dont have any money to invest in ATT

. . .

Auernheimer: if you short ATT dont let me know about it

Spitler: IM TAKIN YOU ALL DOWN WITH ME SNITCH HIGH EVERY DAY

June 7, 2010

28. After defendant Spitler announced that he had stolen over 100,000 ICC-ID/e-mail address pairings, defendant Auernheimer stated: "the more email addresses we get . . . the more of a freakout we can cause if nothing else we can pack these into a [database] . . . and do a mail merge and mail EVERYONE with an ipad 3g l o l[.]" To that, defendant Spitler responded simply: "lawlwla[.]"

June 9, 2010

29. After the Gawker Article was published, defendant Spitler was afflicted by "post-troll paranoia" and solicited advice from other Goatse Security members. "Rucas" offered the following: "what i'd do RIGHT NOW is open your router reset default passwords turn off wep etc that gives you some sort of plausible deniability that it was actually YOU using your internet if you can see other wireless networks in your area use their SSID that way idiots on xp will automatically connect to yours sometime and you can show that there are people who are NOT YOU on your network[.]"

30. Thereafter, the following conversation ensued:

Rucas: remember this key phrase

Spitler: again

Rucas: "I DON'T KNOW ANYTHING. I AM INVOKING MY MIRANDA RIGHT TO REMAIN SILENT."

Spitler: this lan criminal isn't

Rucas: it is

Spitler: no

Rucas: why isn't it why don't you think it is

Spitler: cause I didnt hack anything

Rucas: sure you did you did the exact same thing as changing a username in a url to gain access to a protected site

...

Rucas: you crossed state lines with ur packets so it's a federal crime

Spitler: tri tru

31. Later that day, defendants Spitler and Auernheimer and other Goatse Security members discussed who in the press had disclosed the data breach to AT&T, since, contrary to the Gawker Article, neither defendant nor anyone from Goatse Security had.¹² Indeed, defendant Auernheimer admitted as much to "Nstyr:"

Nstyr: you DID call tech support right?

Auernheimer: totally but not really

Nstyr: lol

Auernheimer: i dont fuckin care i hope they sue me

32. Related, the following conversation ensued:

Spitler: I bet [the publisher of the *San Francisco Chronicle*] leaked us to AT&T faggot is prob regretting not breaking the story acting like sf chron is a real paper still with integrity¹³

Jenk: lol

¹² The Gawker Article reported: "Goatse Security notified AT&T of the breach and the security hole was closed."

¹³ In addition to the e-mail sent to the Board member at News Corporation, defendant Auernheimer sent similar e-mails to the *San Francisco Chronicle* and Thomson-Reuters.

Spitler: or it wa all those reuters employees

...

Nstyr: you should've uploaded the list to full disclosure maybe
you still can

Auernheimer: no no that is potentially criminal at this point we won

Nstyr: ah

Auernheimer: we dropepd the stock price

Nstyr: I guess

Auernheimer: lets not like do anything else we fucking win and i get to
like spin us as a legitimate security organization

June 10, 2010

33. Fearful of the criminal repercussions of the data breach, defendants Spitler and Auernheimer had the following conversation during which they discussed destroying evidence of their crime:

Auernheimer: i would like get rid of your shit like are we gonna do
anything else with this data?

Spitler: no should I toss it?

Auernheimer: i dont think so either might be best to toss

Spitler: yeah, I dont really give a fuck about it the troll is done

Auernheimer: yes we emerged victorious

Spitler: script is going byebye too

F. Losses

34. To date, AT&T has spent approximately \$73,000 in remedying the data breach. Those costs include, among other things, the cost of contacting all iPad 3G customers to inform them of the breach and AT&T's response to it.

-14-

I hereby attest and certify this is a printed copy of a document
which was electronically filed with the United States District Court
for the Western District of Arkansas.

Date Filed: 7/18/11
Christopher R. Johnson, Clerk
By: [Signature], Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CRIMINAL NO. 5:11M5003-001USA vs. ANDREW AUERNHEIMER

COURT PERSONNEL:

DEFENDANT'S COUNSEL:

JUDGE: _____

Ken Osborne
(Name)MAGISTRATE: Erin L. SetserP O Box 1504
(Address)CLERK: Gina HellumsFayetteville, AR 72702
(City, States, Zip Code)RECORDER: Gina Hellums

(479) 521-7727

(Telephone Number)

GOVERNMENT: Dustin Roberts☐ RET ☐ FPD ☐ WV ☒ CJA

INTERPRETER: _____

INITIAL APPEARANCE AND/OR ARRAIGNMENT AND PLEA MINUTE SHEET

- ☒ Proceedings: ☒ initial appearance ☐ arraignment and plea
- ☒ Charges: ☒ magistrate complaint ☐ information ☐ indictment ☐ superseding
- ☒ Rule 5 - District and case number: New Jersey Mag. No. 11-4022 (CCC)
- ☐ Petition on supervised release
- ☒ Level of offense: ☐ petty ☐ misdemeanor ☒ felony
- ☒ Defendant appeared: ☒ with counsel ☐ without counsel
- ☐ Waiver of counsel executed and filed
- ☐ CJA23 financial affidavit executed
- ☒ Counsel appointed
- ☐ Rule 44 (c) inquiry made regarding joint representation of defendants and advised of right to separate representation
- ☒ Inquiry made regarding defendant's age
- ☒ Inquiry made regarding defendant's education level and ability to read/write
_____ English _____ Spanish
- ☒ Inquiry made that defendant is not under the influence of drugs/alcohol
- ☒ Inquiry made that defendant does not suffer from mental disease or disorder and is able to comprehend proceedings
- ☒ Court finds that defendant is person named in Rule 5 charging document
- ☒ Defendant informed of provisions of Rule 20 proceedings
- ☐ Consent to proceed before magistrate executed and filed
- ☐ Waiver of trial by jury executed and filed
- ☐ Waiver of thirty days to prepare for trial executed and filed

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Arkansas.

Date Filed: 1/18/11

Christopher R. Johnson, Clerk

By: G. Hellums, Deputy Clerk

INITIAL APPEARANCE/ARRAIGNMENT AND PLEA
 USA vs. ANDREW AUERNHEIMER

- ☒ Defendant informed of rights
☒ Court finds that defendant has received charging document
☒ Court finds that defendant has read charging document or that it has been read to defendant and that it is understood by defendant
☐ Defendant informed of maximum possible penalties, including payment of special assessment and restitution
☐ Waiver of indictment executed and filed
☐ Information filed
☐ Indictment read ☐ substance of charge stated
☐ Information read ☐ substance of charge stated
☐ Complaint read ☐ substance of charge stated
☒ Defendant waived reading of: ☐ indictment ☐ information ☒ complaint
☐ Rule 11(e) plea agreement disclosed on record and filed
☐ _____

DEFENDANT'S PLEA:

- ☐ Not Guilty to count(s) _____
☐ Guilty to count(s) _____
☐ Nolo contendere to count(s) _____
☐ Court entered plea of not guilty for defendant

SCHEDULE SETTING:

- ☐ Preliminary hearing waived in this district
☒ Detention hearing 1/21/11 at 9:00, 4th Floor Ctrm
☐ Revocation hearing _____
☐ Trial Date _____
☐ Sentencing Date _____
☐ Sentencing deferred pending preparation of presentence report

MOTION DEADLINE:

- ☐ Defendant directed to file Rule 16 discovery motions within _____ days
☐ Government directed to file responses to motions and file its Rule 16 discovery motions within _____ days
☐ Defendant directed to file Rule 12(b) pretrial motions and/or motion for bill of particulars within _____ days after government responses

BOND set at pending outcome of detention hearing

- ☐ Defendant released on present bond
☐ Defendant to make bond and be released
☒ Defendant remanded to custody of U.S. Marshal's Service

SPECIAL CONDITIONS OF RELEASE:

- ☐ Pretrial supervision as directed by the U.S. Probation Office.
☐ _____

DATE: 1/18/2011

Proceedings began: 2:07
 ended: 2:14

Other Documents

5:11-mj-05003-ELS USA v. Auernheimer

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 1/18/2011 at 3:40 PM CST and filed on 1/18/2011

Case Name: USA v. Auernheimer

Case Number: 5:11-mj-05003-ELS

Filer:

Document Number: 4(No document attached)

Docket Text:

CJA 23 Financial Affidavit by Andrew Alan Escher Auernheimer.

This is a text only entry - no document is attached. THE ORIGINAL IS FILED UNDER SEAL WITH THE COURT.

(gh)

5:11-mj-05003-ELS-1 Notice has been electronically mailed to:

Kenneth L. Osborne osborne_bakerlaw@sbcglobal.net

Dustin S. Roberts Dustin.Roberts@usdoj.gov, Jane.Witten@usdoj.gov

5:11-mj-05003-ELS-1 Notice has been delivered by other means to:

CJA 23

Rev. 5/98

FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES

☒ MAGISTRATE☐ DISTRICT☐ APPEALS COURT or☐ OTHER PANEL (Specify below)

IN THE CASE OF

USA

v.s.

Auernheimer

FOR

WESTERN DISTRICT OF ARKANSAS

AT

FAYETTEVILLE

LOCATION NUMBER

ARW-FA

PERSON REPRESENTED (Show your full name)

ANDREW AUERNHEIMER

CHARGE/OFFENSE (describe if applicable & check box →)

☒ Felony☐ Misdemeanor

- 1 ☒ Defendant—Adult
 2 ☐ Defendant - Juvenile
 3 ☐ Appellant
 4 ☐ Probation Violator
 5 ☐ Parole Violator
 6 ☐ Habeas Petitioner
 7 ☐ 2255 Petitioner
 8 ☐ Material Witness
 9 ☐ Other

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED
JAN 18 2011
CHRIS R. JOHNSON
By Deputy Clerk

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

Are you now employed? ☐ Yes ☒ No ☐ Am Self-Employed

\$20 per hour

Name and address of employer:

Previous part-time employment

IF YES, how much do you

IF NO, give month and year of last employment NOV 2008

earn per month? \$

How much did you earn per month? \$ approx

If married is your Spouse employed? ☐ Yes ☐ No

IF YES, how much does your

If a minor under age 21, what is your Parents or

Spouse earn per month? \$

Guardian's approximate monthly income? \$

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☒ Yes ☐ NoOTHER INCOME
IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES

RECEIVED

\$ 200

SOURCES
Consulting

CASH

Have you any cash on hand or money in savings or checking accounts? ☒ Yes ☐ No

IF YES, state total amount \$ 50

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☒ Yes ☐ No

IF YES, GIVE THE VALUE AND \$ DESCRIBE IT

VALUE

300

DESCRIPTION

2000 Honda Civic - not running

MARITAL STATUS

☒ SINGLE☐ MARRIED☐ WIDOWED☐ SEPARATED OR☐ DIVORCED

Total No. of Dependents

2

List persons you actually support and your relationship to them

2 minor Children

overseas

DEPENDENTS

OBLIGATIONS & DEBTS

DEBTS & MONTHLY BILLS

LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CREDIT ACCOUNTS, ETC.

APARTMENT OR HOME

Rent - lives w/ friends, motels

Creditors

Total Debt

Monthly Payment

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

1/18/2011

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)

[Signature]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

No. 5:11M5003-001

ANDREW AUERNHEIMER

DEFENDANT

O R D E R

The defendant requested a detention hearing at the initial appearance on a criminal complaint from the District of New Jersey conducted this date. Accordingly, the defendant is considered detained and remanded to the custody of the United States Marshal Service pending outcome of detention hearing.

The detention hearing is scheduled for Friday, January 21, 2011, at 9:00 a.m., Fourth Floor Courtroom, in Fayetteville.

SO ORDERED this 18th day of January, 2011.

Erin L. Setser
HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE

I hereby affirm and certify this is a printed copy of a document
which was electronically filed with the United States District Court
for the Western District of Arkansas.

Date Filed: 1/18/11
Christopher R. Johnson, Clerk
By: [Signature] Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

CLERK'S MINUTES

USA
PLAINTIFF

ATTY: DUSTIN ROBERTS

ANDREW AUERNHEIMER
DEFENDANT

ATTY: KENNETH OSBORNE

JUDGE ERIN L. SETSER

REPORTER: JANE ANN SHORT

CLERK: JANE ANN SHORT

CASE NO. 5:11M5003-001

DATE: JANUARY 21, 2011

ACTION: IN-COURT HEARING

TIME

MINUTES

9:10 am	Convene
	Detention hearing waived
	Defendant remanded to U.S. Marshal's service for extradition to New Jersey
9:11 am	Adjourn

I hereby attest and certify this is a printed copy of a document
which was electronically filed with the United States District Court
for the Western District of Arkansas.

Date Filed: 1/21/11
Christopher R. Johnson, Clerk
By: [Signature], Deputy Clerk

Other Orders/Judgments

5:11-mj-05003-ELS USA v. Auernheimer

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 1/21/2011 at 10:06 AM CST and filed on 1/21/2011

Case Name: USA v. Auernheimer

Case Number: 5:11-mj-05003-ELS

Filer:

Document Number: 6

Docket Text:

COMMITMENT TO ANOTHER DISTRICT as to Andrew Alan Escher Auernheimer. Defendant committed to District of New Jersey. Signed by Honorable Erin L. Setser on January 21, 2011. (cc: U.S. Marshall Service - Two Certified Copies)(jas)

5:11-mj-05003-ELS-1 Notice has been electronically mailed to:

Kenneth L. Osborne osborne_bakerlaw@sbcglobal.net

Dustin S. Roberts Dustin.Roberts@usdoj.gov, Jane.Witten@usdoj.gov

5:11-mj-05003-ELS-1 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1094675213 [Date=1/21/2011] [FileNumber=596220-0]
[986fec9cdf2ac47a9dc0b9be2bec4da9a0e7a9ac68d363dc4cb6374e1bede6a5c7a
453c868799145324fef0134e15d3540123d70fc83bc91e3099a7e7972bff]]

U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

AO-94 (Rev. 06/09) Commitment to Another District

JAN 21 2011

CHRIS R. JOHNSON, Clerk
By

Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

V.

Case No. 5:11M5003-001

ANDREW AUERNHEIMER
Defendant

Charging District's Case No.
Mag. No. 11-4022(CCC)

COMMITMENT TO ANOTHER DISTRICT

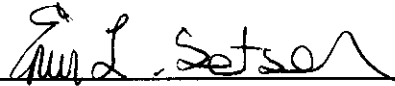
The defendant has been ordered to appear in the District of New Jersey. The defendant will not need an interpreter.

The defendant is requesting court-appointed counsel.

The defendant remains in custody after the initial appearance, having waived the detention hearing on the date it was scheduled,

IT IS ORDERED: The United States marshal must transport the defendant, together with a copy of this Order, to the charging district and deliver the defendant to the United States marshal for that district, or to another officer authorized to receive defendant. The marshal or officer in the charging district should immediately notify the United States attorney and the clerk of the court for that district of the defendant's arrival so that further proceedings may be promptly scheduled. The clerk of this district must promptly transmit the papers and any bail to the charging district.

DATE: January 21, 2011



HONORABLE ERIN L. SETSER
U.S. MAGISTRATE JUDGE

Case 5:11-mj-05003-ELS Document 7 Filed 01/25/11 Page 1 of 1

1. CIR/DIST/DIV. CODE ARW		2. PERSON REPRESENTED AUERNHEIMER, ANDREW ALAN ESCHER		VOUCHER NUMBER																																																																																																																																					
3. MAG. DKT. NO. NUMBER 5:11-005003-001		4. DIST. DKT. NO. NUMBER		5. APPEALS DKT. NO. NUMBER																																																																																																																																					
7. IN CASE/MATTER OF (Case Name) US v. AUERNHEIMER		8. PAYMENT CATEGORY Felony		9. TYPE PERSON REPRESENTED Adult Defendant																																																																																																																																					
				10. REPRESENTATION TYPE (See Instructions) Criminal Case																																																																																																																																					
11. OFFENSE(S) CHARGED (Cite U.S. Code, Title & Section) If more than one offense, list (up to five) major offenses charged, according to severity of offense. 1) 18 1030A.F - FRAUD ACTIVITY CONNECTED WITH COMPUTERS																																																																																																																																									
12. ATTORNEY'S NAME (First Name, M.I., Last Name, including any suffix) AND MAILING ADDRESS OSBORNE, KENNETH P.O. BOX 1345 FAYETTEVILLE AR 72702 Telephone Number: (479) 521-7727			13. COURT ORDER <input checked="" type="checkbox"/> O Appointing Counsel <input type="checkbox"/> P Subs For Federal Defender <input type="checkbox"/> P Subs For Panel Attorney <input type="checkbox"/> C Co-Counsel <input type="checkbox"/> M Subst For Retained Attorney <input type="checkbox"/> V Standby Counsel Prior Attorney's Name: _____ Appointment Date: _____ <input checked="" type="checkbox"/> Because the above-named person represented has certified in writing that he or she (1) is financially unable to pay for legal services, and (2) does not wish to waive counsel, and because the interests of justice require, the attorney whose name appears in Item 13 is appointed to represent this person in this case, or <input type="checkbox"/> Other (See Instructions) Signature of Presiding Judicial Officer (Other than by Order of the Court) Date of Order: 01/18/2011 Name Two Titled Date Repayment or partial repayment ordered from the person represented for this service at time of appointment: <input type="checkbox"/> YES <input type="checkbox"/> NO																																																																																																																																						
14. NAME AND MAILING ADDRESS OF LAW FIRM (only provide per instructions)																																																																																																																																									
US DISTRICT COURT WESTERN DIST ARKANSAS FILED JAN 25 2011 CHRISTOPHER R. JOHNSON, Clerk Deputy Clerk																																																																																																																																									
<table border="1"> <thead> <tr> <th>CATEGORIES (Attach Itemization of services with dates)</th> <th>HOURS CLAIMED</th> <th>TOTAL AMOUNT CLAIMED</th> <th>MATH/TECH ADJUSTED HOURS</th> <th>MATH/TECH ADJUSTED AMOUNT</th> <th>ADDITIONAL REVIEW</th> </tr> </thead> <tbody> <tr> <td>15. a. Arraignment and/or Plea</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>b. Bail and Detention Hearings</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>c. Motion Hearings</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>d. Trial</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>e. Sentencing Hearings</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>f. Revocation Hearings</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>g. Appeals Court</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>h. 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CLAIM STATUS <input type="checkbox"/> First Payment <input type="checkbox"/> Interim Payment Number <input type="checkbox"/> Supplemental Payment Have you previously applied to the court for compensation and/or reimbursement for this case? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, were you paid? <input type="checkbox"/> YES <input type="checkbox"/> NO Other than from the court, have you, or to your knowledge has anyone else, received payment (compensation or anything of value) from any other source in connection with this representation? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, give details on additional sheets. I swear or affirm the truth or correctness of the above statements. Signature of Attorney: _____ Date: _____ </td> </tr> <tr> <td colspan="6"> 23. IN COURT COMP. 24. OUT OF COURT COMP. 25. TRAVEL EXPENSES 26. OTHER EXPENSES 27. TOTAL AMT. APPROVED 28. SIGNATURE OF THE PRESIDING JUDICIAL OFFICER 29. IN COURT COMP. 30. 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I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Arkansas.

Date Filed: 1/25/11

Christopher R. Johnson, Clerk

By: [Signature] Deputy Clerk

CLOSED

**U. S. District Court
Western District of Arkansas (Fayetteville)
CRIMINAL DOCKET FOR CASE #: 5:11-mj-05003-ELS All Defendants
Internal Use Only**

Case title: USA v. Auernheimer

Date Filed: 01/18/2011

Assigned to: Honorable Erin L. Setser

Defendant (1)

Andrew Alan Escher Auernheimer

represented by **Kenneth L. Osborne**

Attorney at Law

P.O. Box 1345

Fayetteville, AR 72702

(479) 521-7727

Fax: (479) 521-0734

Email:

osborne_bakerlaw@sbcglobal.net

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints










18:1030(a) and (c) and 18:1028
FRAUD ACTIVITY CONNECTED
WITH COMPUTERS and FRAUD
WITH IDENTIFICATION
DOCUMENTS




Disposition

Plaintiff

USA

represented by **Dustin S. Roberts**
 U.S. Attorney's Office
 414 Parker Avenue
 P.O. Box 1524
 Fort Smith, AR 72902
 479-783-5125
 Fax: 479-441-0578
 Email: Dustin.Roberts@usdoj.gov
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/13/2011		Arrest Warrant Issued as to Andrew Alan Escher Auernheimer in District of New Jersey, Case NO. 11-4022 by Claire C Cecchi, U S Magistrate Judge. (gh) (Entered: 01/18/2011)
01/18/2011	 <u>1</u>	COMPLAINT as to Andrew Alan Escher Auernheimer (1). Rule 5 from District of New Jersey Magistrate No 11-4022, Claire C. Cecchi, U S Magistrate Judge. (gh) (Entered: 01/18/2011)
01/18/2011		Arrest of Andrew Alan Escher Auernheimer in Western District of Arkansas. Rule 5 arrest from District of New Jersey. (gh) (Entered: 01/18/2011)
01/18/2011		Case unsealed as to Andrew Alan Escher Auernheimer. (gh) (Entered: 01/18/2011)
01/18/2011	 <u>2</u>	Minute Entry for proceedings held before Honorable Erin L. Setser: Initial Appearance in Rule 5 Proceedings as to Andrew Alan Escher Auernheimer held on 1/18/2011 Ken Osborne appeared and was appointed for the defendant. Defendant waived the issues of probable cause. Detention hearing 1/21/11 at 9:00 in this district. Defendant remanded to custody of U.S. Marshals Service. (Court Reporter Gina Hellums) (gh) (Entered: 01/18/2011)
01/18/2011	 <u>3</u>	ORDER OF DETENTION as to Andrew Alan Escher Auernheimer. Defendant waived the issue of probable cause in this district. Detention Hearing set for 1/21/2011 09:00 AM in Fayetteville -- 4th flr BK (Rm 416) before Honorable Erin L. Setser. Signed by Honorable Erin L. Setser on January 18, 2011. (gh) (Entered: 01/18/2011)
01/18/2011	 <u>4</u>	CJA 23 Financial Affidavit by Andrew Alan Escher Auernheimer. This is a text only entry - no document is attached. THE ORIGINAL IS FILED UNDER SEAL WITH THE COURT. (gh) (Entered: 01/18/2011)
01/21/2011	 <u>5</u>	Minute Entry for proceedings held before Honorable Erin L. Setser: In Court Hearing as to Andrew Alan Escher Auernheimer held on 1/21/2011. (Court Reporter Jane Ann Short) (jas) (Entered: 01/21/2011)
01/21/2011	 <u>6</u>	COMMITMENT TO ANOTHER DISTRICT as to Andrew Alan Escher

		Auernheimer. Defendant committed to District of New Jersey. Signed by Honorable Erin L. Setser on January 21, 2011. (cc: U.S. Marshall Service - Two Certified Copies)(jas) (Entered: 01/21/2011)
01/25/2011	 7	CJA 20 as to Andrew Alan Escher Auernheimer: Order appointing Kenneth Osborne to represent defendant. Signed by Honorable Erin L. Setser on January 18, 2011. (rw) (Entered: 01/25/2011)
01/26/2011		Transmittal of Documents to U S District for the District of New Jersey: Original Commitment to Another District; certified copies of other documents; and, certified copy of docket sheet. (gh) (Entered: 01/26/2011)
01/26/2011		(Court only) CASE TERMINATED as to Andrew Alan Escher Auernheimer (gh) (Entered: 01/26/2011)

A TRUE COPY I CERTIFY
CHRISTOPHER R. JOHNSON, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
By: 